

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ALFRED STANKIEWICZ, JR.

Plaintiff

VS.

**LINDE MATERIAL HANDLING
NORTH AMERICA CORPORATION
AND GB INDUSTRIAL BATTERY,
INC.**

Defendants

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Civil Action No. 2:10-CV-44

Judge _____

Jury Trial Requested _____

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW ALFRED STANKIEWICZ, JR., hereinafter called Plaintiff, complaining of and about LINDE MATERIAL HANDLING NORTH AMERICA CORPORATION and GB INDUSTRIAL BATTERY, INC., hereinafter called Defendants, and for cause of action shows unto the Court the following:

I.

JURISDICTION

1.1 The Court has jurisdiction pursuant to 28 U.S.C. §1332 in that the amount in dispute exceeds \$75,000, exclusive of costs and interest, Plaintiff is a citizen of and resident of the State of Arkansas, and Defendants are a resident and citizen of states (South Carolina and New Jersey) other than Texas. Therefore, there is complete diversity of citizenship between the parties.

II.

PARTY PLAINTIFF

2.1 Plaintiff **ALFRED STANKIEWICZ, JR.** is an individual residing in Mountain View, Arkansas.

III.

PARTY DEFENDANTS

3.1 Defendant LINDE MATERIAL HANDLING NORTH AMERICA CORPORATION, a corporation doing business in the State of South Carolina, and doing business in the State of Texas, and may be served with process by serving its registered agent, CT Corporation, at 75 Beattie Place, Greenville, SC 29601. Service of said Defendant as described above can be effected by certified mail, return receipt requested.

3.2 Defendant GB INDUSTRIAL BATTERY, INC., is a business incorporated in the State of New Jersey, and doing business in the State of Texas, and may be served with process by serving its registered agent at 9 Ilene Court, Hillsborough, NJ 08844. Service of said Defendant as described above can be effected by certified mail, return receipt requested.

IV.

VENUE

4.1 Venue lies in the Marshall Division of the Eastern District of Texas. The incident made the basis of this suit occurred in Nacogdoches, Nacogdoches County, Texas which is located within the Eastern District of Texas. As such, venue is proper within the Marshall Division of the Eastern District of Texas.

V.

FACTUAL SCENARIO

5.1 On or about February 5, 2008, ALFRED STANKIEWICZ, JR. was working in Nacogdoches, Texas, and while using the LINDE EW-80 FORKLIFT for the purpose and in the manner in which it was intended to be used, suddenly and without warning the handle impacted his stomach and pinned him against the wall, injuring ALFRED STANKIEWICZ, JR., as hereinafter described.

VI.

LIABILITY OF LINDE MATERIAL HANDLING NORTH AMERICA CORPORATION

6.1 While engaged in the manufacture and sale of the LINDE EW-80 FORKLIFT, Defendant, LINDE MATERIAL HANDLING NORTH AMERICA CORPORATION manufactured and sold a certain LINDE EW-80 FORKLIFT and other like products, to consumers within the stream of commerce. Defendant, LINDE MATERIAL HANDLING NORTH AMERICA CORPORATION intended and expected that the LINDE EW-80 FORKLIFT, so introduced and passed on in the course of trade would ultimately reach a consumer or user in the condition in which it was originally sold.

6.2 Plaintiff, ALFRED STANKIEWICZ, JR., also alleges that the product in question, namely the LINDE EW-80 FORKLIFT, was defective and unsafe for its intended purposes at the time it left the control of LINDE MATERIAL HANDLING NORTH AMERICA CORPORATION and at the time it was sold in that it failed in its design to prevent forceful impact of its operator. The product was defectively designed and unreasonably dangerous in that it forcefully struck Plaintiff Alfred Stankiewicz, Jr. in the abdomen and pinned him against the wall, thereby causing serious and permanent bodily injuries to Mr. Stankiewicz.

6.3 Plaintiff therefore invokes the doctrine of strict liability in Section 402A,

Restatement of the Law of Torts, 2d, and as adopted by the Supreme Court of Texas. Further, in this connection, Plaintiff would show the court that the defect in design was a producing cause of the injuries and damages set forth below.

VII.

LIABILITY OF GB INDUSTRIAL BATTERY, INC.

7.1 While engaged in the manufacture and sale of the LINDE EW-80 FORKLIFT, Defendant, GB INDUSTRIAL BATTERY, INC. manufactured and sold a certain LINDE EW-80 FORKLIFT and other like products, to consumers within the stream of commerce. Defendant, GB INDUSTRIAL BATTERY, INC. intended and expected that the LINDE EW-80 FORKLIFT, so introduced and passed on in the course of trade would ultimately reach a consumer or user in the condition in which it was originally sold.

7.2 Plaintiff, ALFRED STANKIEWICZ, JR., also alleges that the product in question, namely the LINDE EW-80 FORKLIFT, was defective and unsafe for its intended purposes at the time it left the control of GB INDUSTRIAL BATTERY, INC. and at the time it was sold in that it failed in its design to prevent automatic shut-off upon forceful impact. The product was defectively designed and unreasonably dangerous in that it failed to automatically shut off its power when it forcefully impacted Mr. Stankiewicz, thereby exacerbating Plaintiff's injuries.

7.3 Plaintiff therefore invokes the doctrine of strict liability in Section 402A, Restatement of the Law of Torts, 2d, and as adopted by the Supreme Court of Texas. Further, in this connection, Plaintiff would show the court that the defect in design was a producing cause of the injuries and damages set forth below.

VIII.

DAMAGES FOR PLAINTIFF, ALFRED STANKIEWICZ, JR.

8.1 As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, ALFRED STANKIEWICZ, JR. was caused to suffer serious and permanent injuries to his abdomen, and has incurred the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in NACOGDOCHES County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Physical impairment in the past;
- F. Physical impairment which, in all reasonable probability, will be suffered in the future;
- G. Loss of earnings in the past;
- H. Loss of earning capacity which will, in all probability, be incurred in the future;
- I. Disfigurement in the past;
- J. Disfigurement in the future;
- K. Mental anguish in the past; and
- L. Mental anguish in the future.

IX.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein, and that upon trial of the issues in this cause of action before a jury of her peers, Plaintiff recover judgment against the defendant named in this cause for the full sum of his actual damages; for prejudgment and post-judgment interest on all damages as allowed by law; for taxable costs of court; and for all other relief both general and special to which he may show himself to be justly entitled, whether at law or in equity.

Respectfully submitted,

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